IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 4133 of 2005

Date of decision: 24.8.2006

Bachan Kaur Petitioner

Versus

Gurmail Dass Chela and others Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Tribhawan Singla, Advocate,
for the petitioner.

Mr. Deepak Arora, Advocate, for
respondents No.1 to 4.

AJAY KUMAR MITTAL, J. (Oral)

This order shall dispose of Civil Revision Nos. 4132 and 4133 of 2005 as the point involved in both the petitions is similar. However, the facts are taken from Civil Revision No. 4133 of 2005.

In this revision petition filed under Article 227 of the Constitution of India, the plaintiff-petitioner prays for setting aside the impugned order dated 28th May, 2005 passed by the Additional District Judge, Barnala, whereby the application of the petitioner for leading secondary evidence has been declined.

The plaintiff-petitioner had sought to lead the secondary evidence in respect of the registered lease deeds No. 4013 dated 9.9.1975 and 3926 of 24.12.1976. It was stated that the original lease deeds have been lost and are untraceable and therefore, the petitioner be allowed to

lead secondary evidence in respect thereof.

The said application was opposed by the present respondents. Learned trial court by the impugned order has declined the prayer of the plaintiff-petitioner to lead secondary evidence.

Learned counsel for the petitioner submitted that the lease deeds sought to be produced by way of secondary evidence are registered lease deeds and one of the lease deeds bearing No. 3926 dated 24.12.1976 was declared null and void by the learned Additional District Judge, Barnala, by judgment and decree dated 1.12.2001 passed in Civil Suit No. 3 of 20.9.1995 to which the petitioner was not party and as such the same was not binding on her. Learned counsel laid emphasis that the case of the petitioner was covered under Section 65 of the Evidence Act, 1872 (for short "the Act") and, therefore, the trial court should have allowed the production of the registered lease deeds by way of secondary evidence.

Learned counsel for the respondents on the other hand has supported the order passed by the learned trial court and opposed the prayer of the plaintiff-petitioner.

I have heard learned counsel for the parties.

The matter regarding production of registered sale deed by way of secondary evidence came up for consideration before the Orissa High Court in **Rama Chandra Majhi v. Hambai Majhi, AIR 1989 Orissa 27** wherein it was observed thus:

> "Under Section 65 (c) Act secondary evidence of the contents of the documents is admissible where the original is lost. Under S. 65 (f) secondary evidence is also admissible where the original of a public document within the meaning of S. 74 which provides amongst others that public records kept in any State of private

> documents are public documents. Section 52 (1)(c) of the Registration Act, 1908 requires every document admitted to Registration shall be copied in the book appropriated therefor. Section 51 (2) thereof provides for sale deed to be entered in Book-I. Thus, the Book in the registration office where copies of sale deeds admitted to registration are made is a public document. Under S. 57 of the said Act, authority is given to give certified copy of an entry in the register. When the original sale deed whose copy is maintained in the registration office is lost, secondary evidence can be given in respect of the contents thereof by proving the entry in the Register in the registration office. Instead of proving the entry in the register in original, certified copy of entry of the sale deed in such register can be proved. Therefore, no objection can be taken for admitting certified copy of entry in a Book maintained in the registration office as secondary evidence of the contents of a sale deed in case ground for admitting secondary evidence is made out."

Accordingly, it was held that the certified copy of the registered sale deed was admissible in evidence. The present case relates to registered lease deeds and is in pari materia to the aforesaid case. Drawing support from the same, in view of the fact that the lease deeds sought to be produced by way of secondary evidence are registered ones and since one of the lease deeds, being lease deed No. 3926 dated 24.12.1976 which was declared null and void by the learned Additional District Judge, Barnala in Civil Suit No. 3 of 20.9.1995, to which the plaintiff-petitioner was not party, the learned trial court has erred in

declining the prayer for leading secondary evidence.

Accordingly, the revision petitions are allowed. The order dated 28th May, 2005 passed by the learned Additional District Judge, Barnala, is set aside and the petitioner is allowed to lead secondary evidence in accordance with the provisions of Section 65 of the Evidence Act.

24.8.2006 **(AJAY KUMAR MITTAL)**
prem/gbs **JUDGE**